

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 4, 2019, as she no longer had residuals or disability due to her accepted May 6, 2010 employment injury.

FACTUAL HISTORY

On May 7, 2010 appellant, then a 47-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 6, 2010 she sprained her right shoulder while opening and closing the doors of her postal vehicle while in the performance of duty. She stopped work on May 7, 2010.³ OWCP accepted the claim for right neck sprain and sprain of trapezius/rhomboid, C5-6 cervical radiculopathy, and C5-6 cervical disc herniation. On July 22, 2010 appellant underwent a right shoulder arthroscopy with subacromial decompression. On October 8, 2013 she underwent an authorized anterior cervical discectomy and fusion, anterior stabilization of C5-6, and drilling of uncovertebral joints and foraminotomy for decompression C5-6. OWCP paid appellant wage-loss compensation on the supplemental rolls beginning June 21, 2010, and on the periodic rolls beginning December 18, 2011.

On April 16, 2019 OWCP referred appellant for a second opinion evaluation with Dr. Joe W. Crow, a Board-certified orthopedic surgeon, to clarify the nature and extent of her employment-related medical residuals and disability.

A May 22, 2019 functional capacity evaluation revealed that appellant put forth an unreliable effort and numerous inconsistencies were described which invalidated the evaluation.

In a May 29, 2019 report, Dr. Crow, noted appellant's history of injury and treatment. He examined her and provided findings. Dr. Crow noted that appellant walked with a normal gait and limped when under observation. He noted healed arthroscopic portals on the right shoulder and a healed surgical scar on the left shoulder where she had a nonwork-related lipoma removed and acromioclavicular surgery. Dr. Crow indicated that appellant had 5/5 motor strength in the wrist extensors, wrist flexors, elbow flexors, shoulder abduction and forward flexion and dorsiflexion, and plantar flexion of the ankle. He found that the bilateral shoulders showed self-limitation with testing, but with passive examination had full range of motion without any pain. Dr. Crow noted that the neck revealed a healed surgical scar almost invisible in the wrinkle line and that appellant demonstrated motion without any complaints of evidence of pain with forward flexion of 50 degrees and extensions of 60 degrees, side bending of 20 degrees both ways, and rotation of 45 degrees both ways, with no tenderness to palpation or spasm. He related her history of right shoulder strain, cervical strain with cervical radiculopathy, and anterior cervical fusion and found that the accepted right shoulder and cervical spine conditions had resolved and were not causing any visible objective symptomatology. Dr. Crow also found that appellant's subjective complaints and description of discomfort did not fit with any objective findings on his examination, or with findings of previous examiners. He opined that the accepted conditions had resolved and that she

³ The record reflects that appellant did not work from May 19 to August 1, 2010. Appellant returned to work with restrictions and worked from August 2, 2010 through May 27, 2011. She worked as a rural carrier with no restrictions from May 28 until July 18, 2011.

could return to full duties. Dr. Crow concluded that “[f]rom a purely physical standpoint, I do not find limitations which would keep [appellant’s] from returning to this type of work, however, with her variable responses and complaints as noted above as well as inconsistencies and self-limitation during the examination and her history of not working now for nine years, I am doubtful that she will ever return to work.”

On August 14, 2019 OWCP issued appellant a notice advising of its proposed termination of her wage-loss compensation and medical benefits, based on the second opinion physician finding that she had no residuals or disability due to that May 6, 2010 employment injury. It afforded her 30 days to submit additional evidence or argument, if she disagreed with the proposed termination, and enclosed the May 29, 2019 report from Dr. Crow.

In a March 26, 2019 report, Dr. Stephen E. Paulus, an osteopath Board-certified in psychiatry, noted appellant’s history of injury and treatment. He indicated that she initially presented to a former colleague in June 2015, with several years of diffuse neck and radicular arm pain/weakness. Dr. Paulus noted that appellant presented with exacerbation of radicular right arm/leg pain. He also noted that a May 13, 2016 computerized tomography (CT) scan of her cervical spine revealed a minimal dextroscoliosis and evidence of previous C5-6 fusion with hardware, no malalignment, no fracture, no disc herniation, and no central or neural foraminal stenosis. A May 20, 2016 magnetic resonance imaging (MRI) scan showed no evidence of nerve damage, and a July 15, 2015 electromagnetic scan/nerve conduction velocity (EMG/NCV) studies was within normal limits. Dr. Paulus opined that, in light of appellant’s reassuring cervical spine CT and electro diagnostic evaluation, her radicular right arm pain, and weakness were felt to be of unclear etiology.

By decision dated October 3, 2019, OWCP finalized its proposed termination of wage-loss compensation and medical benefits, effective October 4, 2019.

On October 10, 2019 appellant, through counsel, requested a hearing before a representative of OWCP’s Branch of Hearings and Review, which was held on January 31, 2020.

By decision dated March 12, 2020, OWCP’s hearing representative affirmed the October 3, 2019 decision.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee’s benefits.⁴ After it has determined that, an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to

⁴ *R.H.*, Docket No. 19-1064 (issued October 9, 2020); *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

the employment.⁵ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁸

ANALYSIS

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective October 4, 2019, as she no longer had residuals or disability causally related to her accepted May 6, 2010 employment injury.

OWCP referred appellant to Dr. Crow for a second opinion evaluation to determine the extent and degree of her accepted conditions and her work capacity. In a May 29, 2019 report, Dr. Crow noted her history of right shoulder strain, cervical strain with cervical radiculopathy, and anterior cervical fusion. He opined that the accepted right shoulder and cervical spine conditions had resolved and that appellant's subjective complaints did not fit with any objective findings on his examination, or with findings of previous examiners. Dr. Crow advised that he did not find limitations which would keep her from returning to work. He based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion. Dr. Crow provided a well-rationalized opinion based on medical evidence regarding the accepted conditions causally related to the May 6, 2010 employment injury. Accordingly, the Board finds that his second opinion report constitutes the weight of the medical evidence and, thus, OWCP properly relied on his report in terminating appellant's wage-loss compensation and medical benefits.⁹

The evidence submitted by appellant prior to the termination of wage-loss compensation and medical benefits also supports the finding that her accepted conditions had resolved and no longer caused disability. She submitted a March 26, 2019 report from Dr. Paulus, who noted that she presented with right arm/leg pain, neck pain, low back pain, and right C7 radiculitis. Dr. Paulus also noted that appellant's 2015 and 2016 MRI scan, CT, and EMG/NCV studies were essentially normal, and can showed no evidence of nerve damage. He therefore concluded that the source of her claimed right arm pain and weakness was of unclear etiology. As such, the Board

⁵ *A.T.*, Docket No. 20-0334 (issued October 8, 2020); *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

⁶ *C.R.*, Docket No. 19-1132 (issued October 1, 2020); *G.H.*, Docket No. 18-0414 (issued November 14, 2018).

⁷ *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

⁸ *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

⁹ *See V.R.*, Docket No. 19-0758 (issued March 16, 2021); *N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

finds that this report does not support that appellant continued to have employment-related residuals or disability as of October 4, 2019.

As the evidence establishes that appellant had no further employment-related disability or need for medical treatment, the Board finds that OWCP properly terminated her wage-loss compensation and medical benefits, effective October 4, 2019.

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits effective October 4, 2019, as she no longer had residuals or disability due to her accepted May 6, 2010 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 12, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 27, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board